95-389

SUPREME COURT OF THE UNITED STATES
October Term, 1995

Supreme Court, U.S.
FILED
OCT 11 1995
CLERK

RAYMOND WALKER,

Petitioner,

vs.

HARRY K. RUSSELL, WARDEN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

BETTY D. MONTGOMERY
Ohio Attorney General

JEFFREY S. SUTTON
State Solicitor
SIMON B. KARAS
Deputy Chief Counsel
Counsel of Record

CHARLES L. WILLE
Assistant Attorney General
State Office Tower, 26th Floor
30 East Broad Street
Columbus, OH 43215-3428
(614) 728-7055
COUNSEL FOR RESPONDENTS

STATEMENT OF THE CASE

On August 1, 1990, Petitioner Raymond Walker (hereafter "Petitioner") filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Ohio challenging his June, 1984 conviction, by a jury in the Stark County Court of Common Pleas, for first degree murder. Petitioner is presently serving a life sentence. In support of his petition, Petitioner alleged that no rational trier of fact could have convicted him, and that the trial prosecutor improperly used a peremptory challenge to exclude a black juror from the jury panel. Petitioner subsequently abandoned his peremptory challenge claim, relying solely on his insufficiency of the evidence argument.

On March 9, 1994, the District Court denied the petition. Petitioner appealed. On June 13, 1995, the Sixth Circuit denied Petitioner's appeal.

ARGUMENT

THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR REVIEWING THE SIXTH CIRCUIT'S DECISION.

A. PETITIONER'S CLAIM INVOLVES THE LOWER COURT'S FACT-BOUND APPLICATION OF THE WELL-ESTABLISHED STANDARD FOR REVIEWING INSUFFICIENCY OF THE EVIDENCE CLAIMS IN HABEAS CORPUS.

Rule 10 of the Rules of The Supreme Court of the United States provides that a petition for a writ of certiorari will be granted only when there are special and important reasons therefor. In the case at hand, Petitioner's sole claim for relief in habeas corpus is that the evidence was legally insufficient to sustain his murder conviction. The District Court rejected this claim, and the Sixth Circuit affirmed the decision of the District Court.

Respondent submits that the correctness of the Sixth Circuit's decision is of import to Petitioner alone. The issue presented for review relates completely to the Sixth Circuit's application, to the particular facts of his case, of the standard for reviewing claims of evidentiary insufficiency set in *Jackson v. Virginia*, 443 U.S. 307 (1979). As such, the decision is fact-specific and of no broad significance.

Moreover, in recognizing the distinction between weight and sufficiency of evidence, this Court has relied on "the demonstrated ability of judges to distinguish legally insufficient evidence from evidence that rationally supports a verdict." *Tibbs v. Florida*, 457 U.S. 31, 45 (1982). Thus there is no special need for the Court to examine the Sixth Circuit's decision, or for that matter the District Court's

decision, that the evidence in this case rationally supported the verdict.

In short, there are no special or important reasons for granting a writ of certiorari in this case.

B. THE SIXTH CIRCUIT HELD CORRECTLY THAT THE EVIDENCE IS LEGALLY SUFFICIENT.

The Due Process Clause of the Fourteenth Amendment requires that the state prove beyond a reasonable doubt every fact necessary to constitute the charged offense. *In re Winship*, 397 U.S. 358 (1970). In evaluating an insufficiency of evidence claim on habeas, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, *supra.*

In the case at hand, Petitioner was convicted of killing a policeman during a supermarket robbery. Petitioner's defense centered on alibi evidence to the effect that he was in jail in another county at the time of the crime. However, as noted by the Sixth Circuit, two eyewitnesses identified Petitioner as the gunman. Another eyewitness identified Petitioner as the man she saw driving away from the supermarket immediately after the robbery. Further rebutting Petitioner's alibi was evidence that the county jail's procedures for keeping track of prisoners were lax. Respondent submits that the jury was entitled reasonably to believe the eyewitnesses and the state's rebuttal evidence, and the lower courts were entitled reasonably to conclude that this evidence was more than sufficient to satisfy due process. In sum, the Sixth Circuit correctly held that the

evidence is legally sufficient to uphold Petitioner's conviction.

CONCLUSION

Respondent therefore requests that the Court deny the petition for a writ of certiorari.

Respectfully submitted,

BETTY D. MONTGOMERY
Ohio Attorney General

JEFFREY S. SUTTON
State Solicitor
SIMON B. KARAS
Deputy Chief Counsel
Counsel of Record

CHARLES L. WILLE
Assistant Attorney General
State Office Tower, 26th Floor
30 East Broad Street
Columbus, OH 43215-3428
(614) 728-7055

COUNSEL FOR RESPONDENTS

October 11, 1995